

## Gauri Shankar Sharma Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** May 16, 2024

**Acts Referred:** Bihar Police Manual, "Rule 1185A, 1186, 1186(ka), 1186(i), 1186(gha)  
Andhra Pradesh Registration and Subordinate Service Rules, 1966 "Rule 5  
Bihar Police Act, 2007 "Section 55

**Hon'ble Judges:** Bibek Chaudhuri, J

**Bench:** Single Bench

**Advocate:** Y. V. Giri, Pranav Kumar, Shrishti Singh, Md. Irshad

### Judgement

1. The Petitioners are contractual Drivers-Constables, working under Home (Police) Department since the year 2011. They have filed the instant Writ

Petition for the following reliefs:-

i) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the order bearing memo no. 106 dated

15.06.2021 issued under the signature of Assistant (Welfare) of Director General of Police, Bihar whereunder a decision was taken to end

the services of contractual Driver, constables and in any event after 31.07.2021 they will be not paid any remuneration with a direction to

serve a one month notice upon the Petitioners in terms of Clause-9 of the agreement. (Annexure-19).

ii) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the order bearing memo no. 1353 dated 19.06.2021

issued under the signature of Superintendent of Police, Begusarai wherein the services of Petitioner no. 60 namely Vijay Kumar contractual

Driver no. 5499 is being terminated in terms of Clause 9 of the agreement from one month after receiving the letter dated 19.06.2021 and

similar termination letters issued to the other Petitioners by the Superintendent of Police of other districts in view of the letter no. 106 dated

15.06.2021 issued from the office of the Director General of Police (Annexure-20).

iii) To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondents to regularize the service of the

Petitioners who were appointed on the post of Sepoy Driver on the basis of the representation dated 12.10.2018 before the Respondents in

compliance of the direction made in the order dated 06.09.2017 passed in CWJC No. 16505 of 2014 as well as in LPA No. 1648 of 2017 in

its order dated 17.04.2018.

iv) To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondents to allow the Petitioners to continue

on the post of Sepoy Driver on contractual till their age of retirement i.e. 60 years against the vacant sanctioned post of Driver in the police

department.

v) To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondents not to implement the order bearing

memo no. 106 dated 15.06.2021 issued under the signature of Assistant (Welfare) of Director General of Police, Bihar and allowed to be

continued on the post of Sepoy Driver till the pendency of the main writ application.

vi) To any other relief or reliefs for which the Petitioners are entitled.Ã¢â¬â¢

2. By Notification No. 3390, dated 30th July, 2010, a Selection Committee was constituted for appointment of Sepoy Driver against 610 vacant posts

in Bihar Police on contractual basis. Subsequently, on 30th August, 2010, an advertisement was published in the Daily Newspaper Ã¢â¬â¢Danik JagranÃ¢â¬â¢,

by the Director General of Police, Bihar, Patna for appointment of 610 vacant sanctioned posts of Sepoy Driver. In the said advertisement, the

essential qualification was prescribed as 10th pass at Clause 1(ii) and the candidates should have driving license of heavy motor vehicle/light motor

vehicle issued at least two years prior to the publication of the advertisement, prescribed at Clause (1) (iii). Clause 1 (iv) of the said advertisement

detailed out the number of general category and reserved category vacancies in terms of the roster prescribed in letter No. 4184, dated 20th of May,

2010, issued by Home (Police) Department, Bihar, Patna. The Petitioners applied for the said posts and according to merit, they were appointed as

Sepoy Driver on contractual basis for eleven months.

3. It is pertinent to mention here that the Petitioners were initially selected for 11 months and at the time of their appointment they had to execute an

agreement with the Home (Police) Department.

4. Subsequently, the contractual period of the service of the Petitioners were enhanced time to time by Home (Police) Department vide Memo Nos.

1421, dated 26th April 2011; 2480, dated 7th June, 2013; and also subsequently till 2021.

5. It is alleged by the Petitioners that some of them in their representative capacity submitted representation for regularization of their services before

the Director General of Police, Bihar and the Home Secretary, being the competent authorities, for consideration of their case. However, the Home

(Police) Department, State of Bihar issued a letter, bearing Memo No. 1399, dated 19th February, 2014 to the Accountant General, Bihar, mentioning

therein, that there is need of more posts of Sepoy-Driver and Havaladar in view of Rule 1185(A) of the Bihar Police Manual. Accordingly, a total

number of 3031 posts, including 2410 posts of Sepoy Driver, were created. Subsequently, on 21st April, 2014, the Home (Police) Department issued a

notification, whereby and whereunder, Rule 1186 of Bihar Police Manual was amended in exercise of the power under Section 55 of the Bihar Police

Act, 2007. A proviso was added in Rule 1186 (ka) (i) (gha) prescribing a relaxation of five years in the upper age limit for appointment to the post of

Sepoy Drivers, who have been working on contract basis. By the same amendment, the academic qualification for the post of Sepoy Driver was

amended and previous academic qualification of Class 10th pass was replaced by the qualification of Intermediate pass or equivalent. By virtue of the

said memo, some other amendments regarding efficiency test etc. were also amended but the said amendments are not relevant for our purpose.

6. It is also stated that the Drivers appointed on contractual basis in the Police organization would get two additional marks for each year against

experience, subject to the maximum weightage of five marks. Further case of the Petitioners is that the Home (Police) Department issued a

notification bearing Memo No. 5344, dated 15th July, 2011 also, amending the provision of Bihar Police Manual, particularly Rule 1186 (ka) by fixing

lower and upper age limit which is supposed to be effective till 31st December, 2015. It also prescribes the essential educational qualification as 10th

pass or equivalent. The learned senior Advocate for the Petitioners contends that the amended academic qualification as per the Memo No. 233,

dated 21st April, 2014 cannot be made applicable retrospectively with respect to the Petitioners. The Respondents ought to have appointed against the

vacancies existing before the year 2014 on the basis of the earlier qualification prescribed with regard to the appointment of the Sepoy Driver in the

Police Department. The amended academic qualification of Intermediate pass or equivalent may be made operative prospectively from the date of

amendment of Rule 1186 of Bihar Police Manual.

7. Being aggrieved by the said notification, some of the Petitioners filed a Writ Petition bearing C.W.J.C. No. 16505 of 2014 for regularization of their

services to the post of Sepoy Driver by constituting a Selection Board against the sanctioned vacant post. However, the said Writ Petition was

dismissed by the learned Single Judge vide order dated 6th September, 2017. The Petitioners preferred an appeal against the said order passed by the

Writ Court which was registered as LPA No. 1648 of 2017 and the said appeal was also dismissed. While dismissing the Writ Petition, however, the

Writ Court gave liberty to the Writ Petitioners to represent their case before the Respondents for regularization and the same was left open for

consideration by the State respondent in accordance with law. In compliance of the aforesaid liberty given to the Petitioners by the Writ Court, they

filed a detailed representation before the Additional Secretary, Home Department on 12th October, 2018 for regularization of the post of Sepoy

Driver. The respondent authority did not take any final decision over the said representation filed by the Petitioners. In the meantime, services of the

Petitioners were extended vide a letter dated 29th December, 2017 till 31st August, 2018. The Petitioners also state that on 9th October, 2018, the

Additional Secretary, Home (Police) Department submitted an application vide Memo No. 8840 before the Members Secretary, High Level

Committee, General Administrative Department for considering the case of the Petitioners for regularization, considering the fact that the Petitioners

are continuously working in the post of Sepoy Driver since 2011. Subsequently, on the recommendation made by High Level Committee, constituted

for regularization of contractual employees working in different departments, the case of the Petitioners were also taken up and it was disposed of

holding, inter alia, that the process of regular appointment has been initiated, upon which the committee did not make any recommendation with

respect to the present Petitioners. However, the High Power Committee did not consider that in the subsequent selection process, educational

qualification and eligibility criteria were changed and it was not brought to the notice of High Level Committee that due to the change of the

educational qualification and eligibility criteria, the Petitioners would automatically be debarred from appearing in the selection test. While the

Petitioners were debarred from being regularized, their service was extended with a Memo No. 1181 dated 5th February, 2019 from 1st July, 2018 till

the regular appointment to the post of Sepoy Driver is being completed. Subsequently, a memorandum bearing No. 106, dated 15th June, 2021 was

issued from the office of the IG, Budget/Appeal/Welfare, whereunder a decision was taken to end the services of contractual Driver/Constables on

and from 31st July, 2021. Accordingly, some of the Petitioners were served with termination letters. Hence, the instant writ.

8. Mr. Y. V. Giri, learned Senior Counsel on behalf of the Petitioners submits that the Petitioners were among the 610 Sepoy Drivers who were

appointed in the year 2011 on the basis of the Rule formulated vide a Memo No. 3390, dated 30th July, 2010 by the Director General of Police, Bihar.

The Rule prescribed the essential academic qualification and other requirements for being eligible to appear to the post of Sepoy Drivers on

contractual basis. On the basis of the said academic qualification, the Petitioners submitted their applications; appeared in the selection test; and were

selected for employment on contractual basis. They have been working continuously from the year 2011 to 2021 or till date under the Home (Police)

Department.

9. It is further submitted by the learned Senior Counsel appearing on behalf of the Petitioners that the Petitioners got employed, following the regular

procedure on the basis of a competitive selection process and, therefore, their appointment cannot be considered as irregular or backdoor appointment.

They have been working continuously for more than 10 years under the Police Department. On the date of their appointment, they had their requisite

academic and other qualifications. They served the Police Department as permanent employees and their appointment cannot be considered as

irregular, fortuitous or backdoor appointment. Moreover, they were appointed on duly sanctioned vacant posts. Therefore, the decision of the

Hon'ble Supreme Court in the case of Secretary, State of Karnataka & Ors., Uma Devi (3) & Ors., reported in (2006) 4 SSC 1, is squarely

applicable. It is observed by the Hon'ble Supreme Court in Uma Devi (3) (supra) that there may be cases where irregular appointments (not

illegal appointments) of duly qualified persons in duly sanctioned vacant post might have been made and employees have continued to work for 10

years or more but without intervention of orders of the Courts or of Tribunals. The question of regularization of the services of such employees may

have to be considered on merits in the light of the principles settled by the Hon'ble Supreme Court in the light of Uma Devi (supra).

10. The Petitioners were appointed on sanctioned vacant posts on the basis of duly framed Rules by Director General of Police, Bihar on 30th July,

2010 and their appointments cannot be held to be illegal appointments.

11. The learned Senior Counsel on behalf of the Petitioners relies on Narendra Kumar Tiwari & Ors. v. State of Jharkhand & Ors., reported in (2018)

8 SSC 238, wherein Uma Devi (3) (supra) was considered and approved.

12. In Sheo Narain Nagar & Ors. v. State of Uttar Pradesh & Anr., reported in (2018) 13 SSC 432, the appellants, whose services were terminated in

the year 2014 in view of the findings recorded by the High Court vide order dated 27th October, 2014, while dealing with the case of the appellants for

regularization that their appointments were illegal and not an irregular one, moved before the Hon'ble Supreme Court. The Hon'ble Supreme

Court on due consideration of the facts of the case and the decision in Uma Devi (3) (supra) was pleased to hold as hereunder:-

8. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularisation of the

appellants. However, regularisation was not done. The respondents chose to give minimum of the pay scale, which was available to the

regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year

2006, with retrospective effect on 2-10-2002. As the respondents have themselves chosen to confer a temporary status to the employees, as

such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the

submission raised by the learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the

order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

9. The High Court dismissed the writ application relying on the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1

: 2006 SCC (L&S) 753]. But the appellants were employed basically in the year 1993; they had rendered service for three years, when they

were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind

of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available

at the relevant point of time, when their temporary status was conferred w.e.f. 2-10-2002. The appellants were required to be appointed on

regular basis as a one-time measure, as laid down in para 53 of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006

SCC (L&S) 753]. Since the appellants had completed 10 years of service and temporary status had been given by the respondents with

retrospective effect from 2-10-2002, we direct that the services of the appellants be regularised from the said date i.e. 2-10-2002,

consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.

10. Impugned judgment and order [Sheo Narain Nagar v. State of U.P., 2014 SCC OnLine All 16492] and also order terminating the

services are hereby quashed. The appeal is, accordingly, allowed. Pending application, stands disposed of.

13. Learned Advocate on behalf of the Respondents, on the other hand, refers to the decision of this Court in the similar matter passed in C.W.J.C.

No. 16505/ 2014, Hiranman Yadav & Ors. v. State of Bihar & Ors., dated 6th September, 2017, this Court in the aforesaid judgment in paragraph no.

10 held as hereunder:-

10. It is also clear that amendment prescribing minimum educational and other qualifications for appointment on the post of Sepoy

Driver was brought about in the year 2014 and the advertisement for appointment on the aforesaid post was issued in the year 2016 vide

advertisement no. 1 of 2016. After issuance of advertisement for appointment on the post of Sepoy Driver, the Department is not legally

permissible to make any corrections or alteration in the qualification with regard to the educational qualification and other qualification of

the candidates, but, before issuance of any advertisement for appointment the Government can alter or amend the rule with regard to

eligibility of a candidate for appointment on any post to be filled-up in pursuance of any advertisement to be issued. In the case of Y.V.

Rangaiah & Ors.(A.I.R. 1983 S.C., 852)(supra),the fact of the case was that Rule 5 of the Andhra Pradesh Registration and Subordinate

Service Rules was amended in the year 1977 dealing with the transfer and promotion to the post of Sub-Registrar, Grade II, and it was held

that the amendment was brought in the year 1977 and, therefore, the promotion with regard to the vacancy occurring prior to the

amendment of 1977 shall be filled-up with old Rules. The aforesaid rules deal with the transfer and promotion of the persons appointed in

the Registration Department not with regard to fresh appointment on that post in the case of Maya Mathew(2010)4 S.C.C., 498(supra)which

was also with regard to appointment in a cadre from different source and the facts of the case is also quite different. In the case of Union of

India & Ors.(2012) XIII S.C.C., 320(supra), it relates to declaration of seniority of direct recruits vis-à-vis promotees and the ratio of the

case is also not helpful to the case of the petitioners.

14. The learned Advocate for the Respondents also refers to an unreported decision of the Hon'ble Supreme Court in the case of State of

Karnataka & Anr. v. Mangalore University Non-Teaching Employees Association & Ors. delivered on 28th of February, 2002.

15. On careful perusal of the said report, I find that the said judgment is not at all applicable under the facts and circumstances of this case.

16. It is contended by the learned Advocate on behalf of the Respondents that the academic and other qualifications for the recruitment to the post of

Sepoy Drivers were amended w.e.f. 2014. Subsequent to amendment of the said rules, vacancy was declared and the posts of Sepoy Drivers are

decided to be filled up permanently by selection process. If the contractual Drivers do not have the qualifications as per the subsequent notification of

year 2014, they are not entitled to appear in the selection test.

17. At this stage, the question that arises for adjudication before this Court is as to whether a person appointed under a recruitment rule can be

subjected to subsequently amended recruitment rule, whereby he is debarred from appearing in the selection test due to subsequent change of

academic and other qualifications.

18. During 2011, Rule 1186 of Bihar Police Manual prescribed academic qualification for the post of Sepoy Driver as 10th pass or equivalent and the

contractual employees were appointed against 610 sanctioned vacant posts on the basis of the academic and other qualifications stated in Rule 1186.

The appointed Drivers were given training as provided in Clause (3) Appendix 88. Some of them even acted as trainers of training of Drivers under

the name and style of Vajrawahan.

19. It is a settled principle of law that rule of appointment cannot be retrospective in operation.

20. In *A. A. Calton v. Director of Education & Anr.*, reported in (1983) 3 SSC 33, it is held by the Hon'ble Supreme Court in Paragraph 5:-

“5. It is true that the legislature may pass laws with retrospective effect subject to the recognized constitutional limitations. But it is

equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right,

unless the Statute either expressly or by necessary implication directs that it should have such retrospective effect.”

21. In the instant case, the Police Manual spoke of academic qualification of Sepoy Driver. With such academic qualification, as stated in the Rule, the

Petitioners were appointed. Now, by virtue of a subsequent rule made in the year 2014, the Petitioners cannot be said to be disqualified in accordance

with the subsequent rule of recruitment.

22. The subsequent decision of the Hon'ble Supreme Court in *Sree Sankaracharya University of Sanskrit & Ors. v. Dr. Manu & Anr.*, reported in

2023 SCC online SC 640 may also be relied on in this regard.

23. The decision of the Hon'ble Supreme Court, dated 30th January, 2024 in *Vinod Kumar & Ors. v. Union of India & Ors.*, Civil Appeal Nos.-

of 2024, arising out SLP(C) Nos. 22241- 42 of 2016, is quoted below to come to the conclusion in respect of the issue in hand:-

“4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive

nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed

for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent,



and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High

Court has incorrectly applied the principles from the case of Uma Devi (supra) to their situation.

5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely

determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous

service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and

their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and

scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a

Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of

their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment

status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific

circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the

outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service.

Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving

written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma

Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring

the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure,

cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written

examinations or interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.

Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan

[(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned

vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders

of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the

light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of

India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such

irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of

tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled

up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from

this date. We also clarify that regularisation, if any already made, but not subjudice, need not be reopened based on this judgment, but

there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as

per the constitutional scheme. ¶

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as

evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles

and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind

employment regulations. ¶

23. Relying of the above-stated principles laid down by the Hon'ble Supreme Court, the instant Writ Petition is allowed.

24. The Respondent Nos. 2, 3, 5 and 6 are directed to regularize the service of the Petitioners who were appointed on contractual basis in the year

2010 in the light of the observation made hereinabove with effect from 12th October, 2018.

25. The order bearing Memo No. 106, dated 15th of June 2021 issued by the Assistant (Welfare) Director General of Police, Bihar is quashed and set

aside.